

# **EXHIBIT 6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

NETWORK-1 TECHNOLOGIES, INC. )  
DOCKET NO. 6:13cv72  
-vs- )  
Tyler, Texas  
12:59 p.m.  
HEWLETT-PACKARD COMPANY, ET AL November 10, 2017

TRANSCRIPT OF JURY TRIAL  
AFTERNOON SESSION  
BEFORE THE HONORABLE ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. GREGORY DOVEL  
MS. CHRISTIN CHO  
MR. JONAS JACOBSON  
DOVEL & LUNER  
201 Santa Monica Blvd., Ste. 600  
Santa Monica, CA 90401

MR. T. JOHN WARD JR.  
WARD, SMITH & HILL, PLLC  
1507 Bill Owens Parkway  
Longview, TX 75604

COURT REPORTER: MS. JUDY WERLINGER CSR, CRR  
DEPUTY OFFICIAL COURT REPORTER  
P.O Box 75  
Marlin, TX 76661

Proceedings taken by Machine Stenotype; transcript was  
produced by a Computer.

1 FOR THE DEFENDANTS:

2 MS. JENNIFER DOAN  
3 MR. JOSH R. THANE  
4 HALTOM & DOAN  
5 6500 Summerhill Road, Ste. 100  
6 Texarkana, TX 75503

7 MR. DAVID H. DOLKAS  
8 MS. JODI BENASSI  
9 MCDERMOTT WILL & EMERY LLP  
10 275 Middlefield Road, Ste. 100  
11 Menlo Park, CA 94025

12 MS. NATALIE A. BENNETT  
13 MCDERMOTT WILL & EMERY LLP  
14 500 North Capitol Street, NW  
15 Washington, DC 20001

16 MR. HERSH H. MEHTA  
17 MCDERMOTT WILL & EMERY LLP  
18 444 West Lake St.  
19 Chicago, IL 60606-0029

20 MR. MARK E. FERGUSON  
21 MR. MARK S. OUWELEEN  
22 MS. FAYE E. PAUL  
23 BARTLIT BECK HERMAN  
24 PALENCHAR & SCOTT LLP  
25 54 W. Hubbard St., Ste. 300  
Chicago, IL 60654

1 A. It -- it has to be obvious to one of ordinary skill.

2 And, again, in this case it's someone with a bachelor's

3 degree in electrical engineering or an equivalent field.

4 Q. Okay. And you look at it not today but back at the time  
5 period of the claimed invention?

6 A. Yes. I look at it through the eyes of that person at  
7 the time of the invention.

8 Q. And your standard is by clear and convincing evidence?

9 A. Yes, it is.

10 Q. Did you find it by clear and convincing evidence?

11 A. Yes, I did.

12 Q. Now let's look at this. What have we learned in this  
13 case so far about detection methods being well-known in the  
14 late 1990s? Who have you heard that from in this case?

15 A. I believe Mr. Horowitz testified to that, but we've seen  
16 plenty evidence of that.

17 Q. Okay. Did you also see documents that reflected that in  
18 writings from Mr. Horowitz?

19 A. Yes, I did.

20 Q. And we also saw Dr. Fisher just testify at the very end  
21 of the video about things were well known?

22 A. Yes.

23 Q. Detection methods?

24 A. Yes, we did hear that from him this morning.

25 Q. Now let's look at the -- the prior art. And I want to

1 report. I don't want this time taxed against me.

2 THE COURT: I understand. So you just need to be  
3 careful about how you phrase your questions.

4 MS. DOAN: I will. No problem.

5 MR. DOVEL: Thank you, Your Honor.

6 (Bench conference concluded.)

7 Q. (By Ms. Doan) Mr. -- Dr. Neikirk, was Mr. Fisher's  
8 system, was it in public use?

9 A. Yes, I believe it was.

10 Q. And has it been corroborated here that it was in public  
11 use?

12 A. Yes. Dr. Fisher told us this morning that they built a  
13 system, they plugged it into the network at their offices and  
14 used it.

15 Q. But other than that, do -- do we also have additional  
16 evidence of corroboration on the system itself?

17 A. Yes, there is. If you look at the printed circuit  
18 board -- I think Dr. Fisher also mentioned this this  
19 morning -- you can look at that board and there's a marking  
20 on it that says Copyright 1996.

21 MS. DOAN: Your Honor, we'd like to publish the  
22 Fisher -- one of the switchboards to the jury.

23 THE COURT: Any objection to that?

24 MR. DOVEL: No objection, Your Honor.

25 THE COURT: Very well.

1 Q. (By Ms. Doan) And what does the Fisher system teach us?

2 A. If we look at the Fisher system -- and I think, yes,  
3 here we can go back to the system.

4 Q. Sure.

5 A. In the lower right-hand corner it is an access point, a  
6 Wi-Fi hotspot or Wi-Fi access point. That is a device  
7 that -- that exchanges -- sends and receives data over  
8 Ethernet cable. That is an access point.

9 You can see what I labeled 3, that's the  
10 Ethernet connector. And as we saw Dr. Fisher showing  
11 this morning with the cable, that is a data signaling  
12 pair that connects this to the rest of the network.

13 Q. And what else does it teach us?

14 A. If you look at and listen to what -- he described how it  
15 operates when it's plugged into the network. He mentioned  
16 that it's connected to a hub or a switch, which is basically  
17 what we've been seeing for the last week.

18 That device certainly requires a DC power supply.  
19 There's no other way to get a hub to work. So there's also a  
20 main power source in the hub or switch that this access point  
21 would have to be connected to.

22 Q. All right. So the Fisher system, when you go back to  
23 your pieces and you compare them to the actual Fisher system  
24 to the claims in the -- in the '930 patent, which of these  
25 elements does it teach us?

1 A. So, again, we're -- we're looking for these key pieces.  
2 And we have data node which was one, and we have main power  
3 source -- I don't know whether -- we have access device --  
4 I'm sorry -- two, and we have data signaling pair, and we  
5 have a main power source, four.

6 Q. All right. And did you also look at the Fisher patents?

7 A. Yes, I did.

8 Q. All right. So look at the -- the tag line at the  
9 beginning says Fisher '998. Did you look at just the '998 or  
10 did you look at all the Fisher patents?

11 A. No, I looked at both U.S. patents and the PCT.

12 Q. All right. So there's a Fisher '998 and the '704 and  
13 the European patent.

14 A. Yes, that's correct.

15 Q. And what does the Fisher -- what do the Fisher patents  
16 teach us?

17 A. So if we looked at the Fisher patent -- and I think  
18 let's go to Figure 2, I think it is, is a good one to look  
19 at -- well, actually --

20 Q. Let's look at the abstract first if you don't mind.

21 A. We can look at the title and the abstract. The title  
22 tells us it's specifically about supplying electrical current  
23 powering a wireless access point and doing that concurrently  
24 with network data across a transmission line. The  
25 transmission line is that cable that connects the boxes

1 together.

2 Q. All right. And we're on -- we're at DX157. Tell us  
3 what the abstract teaches us as well. And the abstract's on  
4 the first page of the patent, right?

5 A. Yes, it is.

6 Q. Okay. And there's also Figure 1 below -- below the  
7 abstract?

8 A. Yeah. That's -- it's not labeled Figure 1. On the next  
9 page it'll be Figure 1.

10 Q. Okay. And then tell me what the -- tell me what the  
11 abstract teaches us.

12 A. Well, we just talked about the fact that it's  
13 specifically about powering a wireless access point using  
14 power and data over a transmission line.

15 Q. All right. Now let's go to the Figure 2, please. Tell  
16 us what this Figure 2 is teaching us.

17 A. So this is Figure 2 from -- from the Fisher patents and  
18 what we see, this is -- corresponds pretty much to what he  
19 showed us this morning.

20 There is -- on the left it's labeled power adapter.  
21 He called that a wall wart. That is connected using a power  
22 cable, he had that out, and it's connected to a power data  
23 coupler. That was one of those other boxes he held up.

24 There's also a hub. That's the -- or that's  
25 the data node, and that hub is connected also to the



1 power data coupler. Only data flows in that wire. So,  
2 I think I've got that colored green.

3 And then the combination is going to connect over a  
4 network cable out to the wireless access point, that Wi-Fi  
5 node. And when in use, it supplies both power and data via  
6 this network cable.

7 Q. And the -- the hub there on 240 that looks like -- kind  
8 of like a radiator, that is -- and I know this is from 1997,  
9 but that would be equivalent to the -- the hub or switch or  
10 data node that we've had on the tables all week long?

11 A. Yes. It would be fairly -- it's basically the -- the  
12 Ethernet functionality is the same, yes.

13 Q. That's what a -- that's what a hub is?

14 A. That's what a hub is.

15 Q. Okay. And so what -- what pieces does it teach us from  
16 the Fisher patents?

17 A. So if we look at this upper right-hand corner, we have  
18 an access device that was the wireless access point. We have  
19 data signaling pair. We have the -- the network -- or the  
20 data node.

21 Now, it is important to notice that Fisher itself,  
22 even though in this picture it shows a separate power supply  
23 that provides power to the access device, Fisher actually  
24 calls out that you can put all this in one box; and that in  
25 that box you could use the hub's power supply to basically

1 power everything.

2 So, although he didn't draw that picture, he did  
3 call that out in -- in the text.

4 So we have a data node, access device, data  
5 signaling pair, and main power source.

6 Q. And so -- and then this little teal line, that goes from  
7 the powering and data coupler, you've got 3 on it, that goes  
8 up to, like, the wireless access device in the ceiling?

9 A. Yes.

10 Q. What type of -- of information or power is in that? Is  
11 that the combined data and power?

12 A. Yes, that's the combined data and power.

13 Q. Okay. Just like we've been talking about all week from  
14 the switch to the phone?

15 A. Yes, that's correct.

16 Q. All right. So I'll go back to Claim 6. And what --  
17 what elements are taught by the Fisher -- all three Fisher  
18 patents teach the same four elements as well?

19 A. Yes. The -- the data node, access device, data  
20 signaling pair, and main power source appear in the Fisher  
21 patents.

22 Q. All right. Now, my assistant tells me I'm short on  
23 time, so let's go to the Chang patents.

24 A. Okay. The Chang patent -- and if we just look at the  
25 title, the Chang patent is specifically about detecting the

1 presence of a -- a remote device and providing power to that.

2 Q. Okay. And we're talking about DX124, the European Chang  
3 patent as well as DX144, the U.S. Chang patent?

4 A. Yes, we are.

5 Q. All right. And so what else does the Chang patent teach  
6 us in the field of the invention?

7 A. So it specifically talks about using network hubs and  
8 network interface adapters. The network hub will be the data  
9 node and the network interface adapter is the access -- is  
10 the access device.

11 Q. And what else?

12 A. It talks about how it detects the presence of one of  
13 those devices. It's coupled through the pairs, the wire that  
14 connects them. And it talks about providing the electrical  
15 power from the hub to that remote adapter, to the access  
16 device using the network's wiring.

17 Q. Now, let's go to Figure 2 of the U.S. Chang patent?

18 A. Yes.

19 Q. Tell us what this teaches us, please, sir.

20 A. So this shows the details of how the system works or  
21 part of the details. It has a network hub again which is  
22 a -- a data node. It has a -- a presence detector which  
23 we'll look at how that works in just a second, and when  
24 that -- when you plug in a access device that's capable of  
25 receiving power, the presence detector will note that and

1 then data and power will both flow to and from -- or data  
2 will flow both ways, power will flow to the access device.

3 Q. Let me -- let me stop you right there. See the long  
4 blue box you have there where it's got network hub, is that  
5 like one of the backs of the switches we've been looking at  
6 all week long?

7 A. Yes.

8 Q. And these little small boxes, square boxes, they're like  
9 the little ports on the outside of the -- the switches?

10 A. Yes. Or -- or it could be even the bigger box, and this  
11 is internal and you have those things labeled 204. They're  
12 the same.

13 Q. Okay.

14 A. Same thing.

15 Q. And you've got something blinking here on 206. What is  
16 that?

17 A. So 206 is the detected device. It is a -- let's see.  
18 It is a network -- it is an access device. It sends and  
19 receives data over the network.

20 Q. Okay. And what else does it teach us?

21 A. It also teaches us that if you have a device that's not  
22 capable of accepting power -- so if you look at the two  
23 things on the lower right-hand corner that are labeled  
24 computer, those are devices that Chang specifically points  
25 out are not capable of receiving power, and Chang's system

1 would actually select them not to apply power, so it not only  
2 detects whether a device is capable of accepting power, it  
3 also detects when it's not and it makes a decision on  
4 supplying power based on that.

5 Q. And that's like the example we saw this week where the  
6 switch was attached to a laptop computer which doesn't  
7 receive power and then the phone which does receive power and  
8 data?

9 A. Yes, that's correct.

10 Q. Okay. And what else does it teach us? So which pieces  
11 are met by -- by the Chang patent?

12 A. So we have using the same labeling system the net -- the  
13 network device, the access device, the data signaling pair.  
14 So that's one, two and three. And there's a main power  
15 supply, Chang discusses that. And that's four.

16 Q. Okay. Now, let's look -- let's look and compare it back  
17 to Claim 6 which -- which the pieces and elements that have  
18 been met with respect to Claim 6.

19 A. So we have data node, access device, data signaling  
20 power, main power source.

21 Q. And?

22 A. In addition to that, we had a sensing and a controlling  
23 element.

24 Q. Okay. And the controlling element?

25 A. So that -- that's the whether power is applied or not.

1 That's controlling.

2 Q. All right. Now let's look at Woodmas, please. This is  
3 the Woodmas '592 patent.

4 A. Yes, it is.

5 Q. Let's -- what is -- and it's DX -- I'm sorry -- DX119.  
6 Tell us what Woodmas teaches us.

7 A. Woodmas is about a system that has to send and -- and  
8 receive information, data, back and forth between a control  
9 station -- and in this example a camera -- and it wants to  
10 use only a single set of wires.

11 So it's the wires are 30, which it identifies can  
12 be a two-wire pair or a coaxial cable. They're just  
13 different kinds of wires.

14 So it also talks about how it starts the presence  
15 detection by applying a low-power output to the cable. That  
16 is received over there on the right at the power reception  
17 unit.

18 There's a voltage controlled oscillator inside that  
19 that responds to the applied power, which is about 15  
20 milliamps, if I recall what the patent suggests.

21 It sends back a signal, and then the power delivery  
22 unit senses that signal; and in response to it, if it's  
23 present, it applies full operating power.

24 It does that via a control element via a field  
25 of trans -- transistor, FET.

1 Q. All right. So, stop here because it looks like this is  
2 a camera and a headset and a microphone. How is that  
3 equivalent to the IP that we saw earlier with respect to  
4 transmitting data and power?

5 A. So the access device has to do just that. It has to  
6 transmit -- it has to transmit and receive information, data.  
7 It also has to be powered, and that's -- the camera requires  
8 power. The power reception unit helps negotiate whether it  
9 receives power, and it transmits -- the data transmits back  
10 and forth.

11 Q. And applying Judge Schroeder's claim construction,  
12 Woodmas, that's in this case, Woodmas clearly connotes a low  
13 level current?

14 A. So this --

15 MR. DOVEL: Your Honor, that's leading.

16 MS. DOAN: I'm sorry.

17 THE COURT: Sustained.

18 Q. (By Ms. Doan) Applying your -- Judge Schroeder's claim  
19 construction from this case, does it apply -- does it show  
20 what type of detection or current is being used, and if so,  
21 what?

22 A. So applying the Court's construction it's clearly  
23 teaching us a great deal about low level currents because  
24 they have to be something that's sufficient to begin start up  
25 but not sustain, which there is clearly a low -- a limited

1 power applied that causes the voltage-controlled oscillator  
2 to operate and only in response to that will it send full  
3 power.

4 Now, to be careful, it -- that has to be sent over  
5 a data signaling pair, which has to connect an access device  
6 to the network device. And -- and in Woodmas those aren't  
7 present.

8 So I'm going to go ahead and label it, but I want  
9 to point out that it's not -- standing on its own, it doesn't  
10 meet the Court's construction for low level current standing  
11 of its own.

12 Q. And so what do you have to do to meet the Court's  
13 construction with respect to Woodmas?

14 A. So that's where the combination of the pieces of art  
15 comes into play because we have to look at not only whether  
16 all of those pieces are present, but do they relate to one  
17 another in the same way the patent does.

18 Q. Okay.

19 MS. DOAN: Let's go to 34, please, Josh.

20 Q. (By Ms. Doan) First of all, all three combined teach all  
21 of the elements; is that correct?

22 A. Yes. And I'll go ahead and check off low level current,  
23 again, pointing out that we'll see that it's truly the low  
24 level current as construed by the Court when we look at the  
25 combination.



1 MS. DOAN: Go to 35, please. Yes.

2 Q. (By Ms. Doan) Tell us about this combination. Is this  
3 what you're combining, all three of them together?

4 A. So I'm combining the Fisher system, the three Fisher  
5 patents, the Chang patents and Woodmas. And to do this let  
6 me start with the Fisher system.

7 It was a foundational Power over Ethernet system,  
8 and one of the things the Fisher system taught was a kind of  
9 presence detection.

10 Dr. Fisher talked about the encryption. And so  
11 let's use that as the access device. So I put it up there.

12 That encryption system, he also talked about you  
13 had to have a network security system to monitor it.  
14 That's -- that is fairly high level, requires another  
15 computer.

16 So one of ordinary skill in the art would -- would  
17 be motivated to look for a simpler thing that doesn't require  
18 another computer connected to that. Something that would do  
19 it all with the hub.

20 Q. And -- and, Dr. Fisher, you're -- sorry -- Dr. Neikirk,  
21 you're talking now about the Fisher system, images DX089 and  
22 the Fisher '704 patent, DX138 and the Fisher patent '157; is  
23 that right?

24 A. Yes, I am.

25 Q. Okay.

1 A. So in -- what one of ordinary skill trying to simplify  
2 that system that -- from Fisher --

3 Q. And what would you combine next?

4 A. -- would look to Chang. Chang puts everything in --  
5 puts everything in a hub. So it's now simpler and more  
6 combined. So we'll put that there.

7 Q. Okay. And what's next?

8 A. And so there's still an issue, though, because Chang  
9 actually used what are called spare pairs to do its presence  
10 detection and powering. And he also points out there's  
11 situations where you only have three pairs of wires, two of  
12 them are always used for the Ethernet traffic. So you only  
13 have one pair left. That actually isn't enough to implement  
14 what Chang taught.

15 So, again, one of ordinary skill seeing that  
16 problem is going to go look for something that can do it all  
17 over one pair which is Woodmas. Woodmas teaches doing  
18 everything over that pair of wires, 30.

19 So we'll take the power delivery unit and put it in  
20 the hub. We'll take the power reception unit and put it out  
21 in the wireless access point. And now we've accomplished  
22 everything we wanted to do.

23 We're doing power over data signaling pair. The  
24 data signaling pair is present because the signal is -- sent  
25 back from the power reception unit is, in fact, information.

1 It's data. It provides power on that same power -- pair of  
2 wires.

3 All of the elements -- all of the pieces are  
4 present and their interrelationships between the various  
5 pieces are all present.

6 Q. All right. And so let's look at it in comparison to  
7 Claim 6. Are all the elements now made in Claim 6,  
8 especially with Woodmas after you've combined everything  
9 together?

10 A. After you've combined everything together, all the  
11 pieces are there, and all the interrelationships are there.

12 Q. And let me ask you this: I know we just saw a bunch of  
13 things move around the screen. Is this the proper analysis  
14 for one of ordinary skill in the art for looking at obvious  
15 combinations with respect to an invalidity analysis?

16 A. Yes, it is. It's not just a random collection of pieces  
17 of art where you cherry pick. You have to have -- there has  
18 to be some reason why that person of ordinary skill would --  
19 would put it together this way, and I've just explained why  
20 you'd do that.

21 Q. Now, I know that Dr. Knox, when he did his analysis, he  
22 went through Claim 6, and then he just put up these and said  
23 these other claims were met too. Have you actually done the  
24 analysis with respect to each, Claims 13, 14, 17, and 22 that  
25 have the same pieces as Claim 6?

1 Yes.

2 Q. (By Ms. Doan) So with respect to wrapping up with  
3 respect to the prior art that you've analyzed in this case,  
4 what is your opinion after combining and analyzing each of  
5 the pieces and the elements in each of the claims of the '930  
6 compared to what was known in the art at the time?

7 A. So it is my opinion that the patent claims are obvious  
8 in light of the prior art. There's motivation to combine the  
9 prior art in the way that -- that yields the claims of the  
10 patent. That, yes, it is obvious.

11 Q. And what is the red bar down here at the bottom?

12 A. That's just trying to indicate. We see that there's --  
13 there's several patents there that all relate generally to  
14 remote -- to sensing of devices. And so in that time frame  
15 it's clear that the presence detection was something that was  
16 generally known.

17 Q. Okay. Thank you, sir.

18 MS. DOAN: Pass the witness.

19 THE COURT: Cross?

20 MR. DOVEL: Yes, thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. DOVEL:

23 Q. Good afternoon, Dr. Neikirk.

24 A. Good afternoon.

25 Q. I just want to talk to you first about one of your

1 the various elements of the claim.

2 Q. Sir, in your opinion, does Woodmas disclose or teach a  
3 low level current using the Court's definition of low level  
4 current applied correctly as you understand it?

5 A. Applying the Court's constructions as -- as Dr. -- Dr.  
6 Davis -- excuse me. It's late on Friday -- as the Plaintiff  
7 has, then yes, it is present.

8 Q. And do you agree that Dr. Knox has properly applied the  
9 Court's constructions?

10 A. I actually, respectfully, disagree with Dr. Knox's  
11 application of the Court's construction so --

12 Q. Let's go back to my question then.

13 In your opinion, does Woodmas disclose or teach a  
14 low level current using the Court's definition of low level  
15 current applied correctly?

16 A. Applied as -- as the Plaintiff has applied it, it is  
17 present.

18 Q. No, sir. As you think it should be applied.

19 A. Okay. So you want to take it out of the context of the  
20 infringement analysis and ask me about my view of what it  
21 means to start up or not sustain start up, then yes, I'd  
22 agree. I don't think it's present.

23 Q. In other words, when you're doing an invalidity analysis  
24 in this case, you've got to apply the Court's claim  
25 constructions, correct?

1 A. In the context of the combination that we talked about,  
2 the Fisher system, the Fisher patents, Chang and Woodmas,  
3 absolutely.

4 Q. And is there any doubt in your mind that with respect  
5 to -- is there any doubt in your mind that with respect to  
6 the Court's claim construction of low level current and the  
7 combination we put before this jury, that the combination  
8 does indeed show a low level current?

9 A. No. There's absolutely no doubt in my mind whatsoever.

10 Q. And Mr. Dovel was telling you that, well, if you apply  
11 it differently. What they're trying to do, would you agree,  
12 is that they want one construction for infringement but for  
13 you to look totally differently for invalidity; is that  
14 right?

15 A. That certainly is how it appears to me.

16 Q. And isn't it the law that an infringement analysis  
17 should be the same thing for an invalidity analysis?  
18 Goose/gander rule. We're familiar with that.

19 A. I'm not familiar with that phrase, but that's what I've  
20 been told before. You have to do it the same way for both.  
21 You can't get it one way and not get it the other.

22 Q. So if Dr. Knox is going to take the position, in sending  
23 any current at all as a low level current, then he's got to  
24 live and die with that on the invalidity analysis, right?

25 A. If that's what Dr. Knox said. I mean, whatever he says

1 for infringement, you have to do the same thing for the  
2 validity analysis.

3 Q. Right. And so in your expert report, the part that  
4 Dr. -- that Mr. Dovel did not show the jury, you do actually  
5 say that Woodmas shows low level current as the interpreted  
6 by Dr. Knox?

7 A. I -- I believe that that's either a direct quote or very  
8 close to the exact words I used, yes.

9 Q. I'm seeing here the paragraph --

10 MS. DOAN: And can you blow that up, please, Josh?

11 Q. (By Ms. Doan) -- that Mr. Dovel did not show.

12 Well, you're honest that you disagree with  
13 Network-1's application of the Defendants' construction of  
14 low level current, but note that under such an erroneous  
15 application, Chang, in view of Woodmas, does disclose a low  
16 level current.

17 In particular, as discussed above, Woodmas is --  
18 15mA current participates in a detection routine, subsequent  
19 to which a connected access device may actually start up.  
20 Woodmas explains that its 15mA current is applied, quote,  
21 when power delivery unit 34 is initially energized, closed  
22 quote.

23 And after supplying this 15mA current, Woodmas,  
24 quote, asks whether the power status signal is present as  
25 detected, closed quote, and provides the power signal status

1 to microcontroller 54, if detected.

2 Do you see that?

3 A. I do.

4 Q. That's exactly what you told the jury, is it not?

5 A. Yes, it is.

6 Q. By delivering this 15mA current before full operating  
7 power is supplied and looking for a return voltage  
8 representative of the full low level current, both the  
9 presence and functionality of power delivery unit 76 are  
10 checked before full power is imposed on cable 30.

11 Do you see that?

12 A. I do. That's --

13 Q. And that would be applying Judge Schroeder's claim  
14 construction of beginning to start up the access device but  
15 insufficient to sustain start up, as Dr. Knox is applying it,  
16 right?

17 A. Yes, that's correct.

18 Q. Using his analysis and the way he's applying it, these  
19 patents are invalid?

20 A. Yes, they are.

21 MS. DOAN: Nothing further.

22 THE COURT: Recross?

23 MR. DOVEL: Pass the witness, Your Honor.

24 THE COURT: All right.

25 MR. DOVEL: Nothing further.



1 last comment he made about promissory estoppel, we are  
2 requesting that there be a damages question for HP's breach  
3 of contract counterclaim.

4 THE COURT: Well, let me suggest, to the extent the  
5 verdict form is -- that's previously been submitted --  
6 different from what you all want now, I'm going to ask you to  
7 resubmit it.

8 MS. BENNETT: Absolutely. That's fine.

9 THE COURT: Let's do that by noon tomorrow.

10 MS. BENNETT: Will do.

11 THE COURT: Okay. What else? Anything else?

12 All right. Hope you get some rest this weekend.

13 MR. JACOBSON: Your Honor, I apologize. The  
14 Plaintiff has some motions judgments as a matter of law.

15 THE COURT: Okay.

16 MR. FERGUSON: Sounds like you're eager to hear  
17 them.

18 MR. JACOBSON: Now that it's clear I'm the one  
19 holding us here, I'll be as concise as possible.

20 THE COURT: Everyone knows.

21 MR. JACOBSON: I want to address a few issues  
22 briefly, and then one -- I want to address one issue in some  
23 more detail.

24 First, we move for a judgment as a matter of law  
25 that the Fisher system is not proper prior art under

1 Section 101, and there's two bases for this.

2 One, there's no evidence of public use from which a  
3 reasonable jury could find that element. The only evidence  
4 that was even asserted was that the system was used in the  
5 3Com offices. That can't possibly be public use because the  
6 public can't even just walk into the 3Com offices and see  
7 it's being used.

8 Second, Your Honor, the Federal Circuit requires  
9 corroboration when an inventor testifies that he invented  
10 something. There was zero corroboration of the  
11 authentication element of the Fisher system, which was  
12 asserted to cover -- to satisfy the detection elements of the  
13 '930 patent.

14 Second, Your Honor, the Fisher, Woodmas, and Chang  
15 combination is estopped under IPR estoppel, Section 315. It  
16 was raised or reasonably could have been raised by HP in the  
17 IPR.

18 What HP did in adding the Fisher system as a  
19 redundant, additional piece into that combination, cannot  
20 defeat IPR estoppel. That would swallow the estoppel rule.

21 There's another basis, that HP's entire validity  
22 case should be rejected as a matter of law. Their own expert  
23 admitted that applying the Court's claim construction  
24 correctly, there is -- that the combination doesn't render  
25 the patent obvious.

1           Given that admission, there's not sufficient  
2           evidence for which any reasonable jury could conclude that  
3           the patent is obvious.

4           Now, let me address the issue I wanted to address  
5           in some more detail, Your Honor. We're moving for judgment  
6           as a matter of law on HP's promissory estoppel claim. Their  
7           promissory estoppel claim is related to the RAND obligation.

8           They claim that Merlot made a promise to offer  
9           reasonable and nondiscriminatory rates; that HP relied on  
10          that promise; and that it was injured by its reliance.

11          This theory fails for two independent reasons as a  
12          matter of law, Your Honor. I have a couple of slides on this  
13          one, which I'll put up.

14          The parties have been addressing the contract  
15          claims under New York law, Your Honor. I'm not aware of any  
16          other potential choice-of-law state where the law would  
17          differ.

18                   (Discussion off the record.)

19          MR. JACOBSON: I've been informed this is withdrawn  
20          Your Honor, so the good news is I'm done.

21          THE COURT: Well, that one will be easy,  
22          Mr. Jacobson.

23          MR. FERGUSON: That's one less slide we have to  
24          see.

25          MR. JACOBSON: Those are all the issues I wanted to

1 Dr. Neikirk's testimony, and what they learned about the  
2 Patent Office from Mr. Godici.

3 MR. JACOBSON: Your Honor, I should make one thing  
4 clear about the Fisher system, for the record.

5 Mr. Fisher testified about two different systems.  
6 He testified about a system he built and he actually had some  
7 physical pieces of. And for that system, there's absolutely  
8 no contention that it even did detection. That system was  
9 offered to purportedly satisfy other elements of the claim.  
10 So that's what he had the physical pieces of.

11 Now, in his deposition, he testified about another  
12 system he says he built, a system that could do  
13 authentication. And that system is what was offered as  
14 evidence of invalidity of the detection elements of the '930  
15 patent.

16 And for the authentication system, there's no  
17 corroboration whatsoever. The physical pieces he had he  
18 admits don't do authentication. He's got no documents that  
19 demonstrate that authentication system existed, and no  
20 evidence whatsoever of public use for that authentication  
21 system.

22 THE COURT: Thank you, Mr. Jacobson.

23 Mr. Jacobson, I'm going to deny your motions for  
24 the same reasons I've denied Ms. Bennett's motions. I think  
25 there's a legally sufficient evidentiary basis on all of

1     these issues for a jury to find in the Defendants' favor.

2             So your motions will be denied.

3             MR. JACOBSON: Understood, Your Honor.

4             THE COURT: All right. Very well.

5             What else?

6             Mr. Thane? Exhibits.

7             MR. THANE: Yes, Your Honor.

8             With respect to exhibits, there were a number of  
9     exhibits that were shown today. It would probably be best if  
10    we could meet and make sure that we agree on which ones are  
11    going to come into evidence and make sure there's not any  
12    objections.

13            Would you prefer that we do that now?

14            THE COURT: I think that makes sense.

15            Mr. Jacobson, is that okay with you?

16            MR. JACOBSON: That's amenable to me, Your Honor.

17            We do have a few from yesterday that we have met  
18    and conferred on, and I'll go ahead and read those in.

19            THE COURT: That's fine.

20            MR. JACOBSON: All right. Plaintiff moves into  
21    evidence DX5, DX74, DX75, DX78, DX79, P252, and P253.

22            THE COURT: All right. And those are without  
23    objection?

24            MR. THANE: Without objection, Your Honor.

25            THE COURT: All right. Very well.

1 COURT SECURITY OFFICER: All rise.

2 (Court recessed.)

3  
4 CERTIFICATION

5  
6 I HEREBY CERTIFY that the foregoing is a true  
7 and correct transcript from the stenographic notes of the  
8 proceedings in the above-entitled matter to the best of our  
9 abilities.

10  
11  
12 /s/ Shea Sloan

November 10, 2017

SHEA SLOAN, CSR

Official Court Reporter

State of Texas No.: 3081

Expiration Date: 12/31/18

15  
16  
17 /s/ Judith Werlinger

JUDITH WERLINGER, CSR

Deputy Official Court Reporter

State of Texas No.: 731

Expiration Date 12/31/18  
19  
20  
21  
22  
23  
24  
25